

27023000

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
the City of San Luis Obispo for )  
Review of the Final Decision of )  
the Division of Water Quality. )  
Our File No. G-60. )

---

ORDER NO. WQG 82-6

BY THE BOARD:

This appeal involves interpretation and application of "fair and equitable" service requirements.<sup>1 /</sup> Relevant facts, issues, and our conclusions therein are set forth below.

I. BACKGROUND

On February 3, 1981, the petitioner, the City of San Luis Obispo (hereafter City), accepted federal and state assistance for construction and upgrading of certain treatment facilities. The facilities have an anticipated treatment capacity of 5.1 million gallons per day (mgd). As part of the grant process, the City's service area was defined, the City agreed to act as a regional treatment facility, and treatment capacity was allocated as follows:

- 
1. See Guidelines for Administering "Fair and Equitable" Clause Contained in Clean Water Grant Contracts, adopted November 1, 1973.

(1) City Incorporated Area (including 0.05 industrial flow)	4.27 mgd
(2) California Polytechnic State University	0.60 mgd
(3) Unincorporated Area	0.23 mgd <sup>2/</sup>
	<hr/> 5.10 mgd

As part of the federal and state grant contracts, a special condition was imposed requiring the City to "operate the treatment works as a coordinated regional facility providing service on a fair and equitable basis and in accordance with guidelines and regulations of the State Board, specifically for all agencies or areas within the service area designated in the Grantee's Project Report."

The City has adopted a Sewer Service Plan which, with very limited exceptions, requires annexation as a condition of service in the unincorporated area. Historically, in accordance with what was perceived to be State Board policy, the State Board's Division of Water Quality (DWQ) has taken a position that the "Fair and Equitable Guidelines" preclude "forced annexation", i.e., that a requirement of annexation by a regional facility as a condition of providing sewerage service is an unfair and inequitable condition.

---

2. At this time, the City is providing approximately 0.046 mgd of sewerage service to the airport which is in the unincorporated area, leaving approximately 0.184 mgd of the capacity allocated to the unincorporated area still available.

Accordingly, DWQ staff took the position that the City's Sewer Service Plan with its general requirement for annexation as a condition of service was contrary to the City's special grant condition. The City objected vigorously to the DWQ staff position on a variety of grounds which are summarized hereafter. Good faith attempts to resolve the dispute were not successful. DWQ staff eventually issued its final decision, resulting in a petition from the City basically requesting that the State Board review and overrule the DWQ staff decision.

Other relevant facts, briefly stated, are:

1. The unincorporated area which is included within the City's service area is primarily within the City's "sphere of influence" as determined by the San Luis Obispo Local Agency Formation Commission (LAFCO).

2. The City's General Plan and the San Luis Obispo County Land Use Element are generally consistent.

3. The unincorporated area includes an existing mobile home park known as Hidden Hills Mobile Home Park. This development has existed for a number of years. According to the Central Coast Regional Board, this development constitutes a significant water quality problem and the Regional Board believes that the City should provide sewerage service to this development to eliminate the water quality problem.<sup>3/</sup>

---

3. We are advised that the capacity needed to serve this development is approximately 0.014 mgd.

In accordance with our regulations, an informal meeting was held on May 7, 1982, to explore resolution of the problem. Ms. Carla M. Bard, Chairwoman, represented the State Board. The City was represented by Mayor Melanie C. Billig and other representatives. Also present at the meeting were Mr. Ken Jones, Executive Officer of the Central Coast Regional Board; Ms. Mary Shallenberger of the Governor's Office of Planning and Research; and DWQ staff members.

## II. THE CITY'S POSITION

In substance, the City's position is that a requirement for annexation as a condition of service is not unfair or inequitable where:

1. The area in question is within the City's "sphere of influence".

2. City and County planning for the area involved is in alignment, and both City and County Plans contemplate annexation as a condition of connection to the City's sewerage system.<sup>4/</sup>

---

4. The City forcefully argues other legal and practical reasons for allowing a condition of annexation, such as ability of the City to enforce an adequate source control program when the area served is within City boundaries and subject to City ordinances, and implementation of the Governor's Urban Strategy. In view of the fact that we fundamentally agree with the City's basic position, we do not deem it necessary to discuss the additional contentions and arguments by the City.

### III. DISCUSSION

The "Fair and Equitable Guidelines" were adopted in 1973. At that time, and to a large extent today, treatment works were funded on a regional basis for one primary reason. Regional facilities are more cost-effective. It is simply less expensive to construct one facility for the entire area which logically should be served by that facility than to construct separate treatment works for each and every existing municipality and pocket of development.

However, early on, it became apparent that municipalities, primarily cities, which had received federal and state grants for regional facilities, including capacity for areas beyond their jurisdiction, were using their grant funded facilities to force outlying areas to annex to or be incorporated into the jurisdictional limits of the grantee, regardless of all other considerations. This unfortunate situation was the genesis for adoption of the Guidelines and the policy that "forced annexation" was unfair and inequitable. The rationale was simple. The primary source of funding was state and federal grant moneys, ultimately paid for by all taxpayers. To the extent that capacity for outlying areas had been essentially paid for with state and federal grant funds, it was deemed unfair to permit the grantee to use this capacity as a sword to compel other areas to annex regardless of the desire of those areas and their inhabitants and regardless of the question of whether annexation of a particular area was either beneficial or necessary.

In the societal context of the early 1970's, and considering the attitude of a number of grantees at that time, the then State Board was probably wise in essentially precluding forced annexation. However, this Board recognizes that circumstances have changed dramatically since 1973. Among other things, planning concepts and goals have changed. Economic conditions are vastly different. Local agency planning procedures and the results thereof are vastly improved, due in part at least to a much more active and vigorous role taken by Local Agency Formation Commissions to assure that proposed annexations are logical and justified.

This Board recently had occasion to discuss "fair and equitable" service requirements.<sup>5 /</sup> While the issue presented, and the factual circumstances involved were considerably different, the general principle enunciated in that matter also applies to this petition:

"The...property...is within the City's sphere of influence. It is not illogical to assume that in the ordinary course of events the property in question would be annexed to the City...."

"It is...not our intent to unduly interfere in matters which primarily involve local planning decisions unless water quality concerns leave us no choice."

It seems to us that, in California today, where a grantee's sphere of influence has been defined, where the issue

---

5. See Petition of Fite Development Company, Order No. WQG 82-4.

involved is service to future development within the grantee's sphere of influence, and where there is no overriding water quality problem involved, the question of whether annexation of the area involved should be required as a condition of service is primarily a local planning decision. Absent unusual circumstances, that decision should be left to the governmental agencies legally charged with making the determination -- the cities and the appropriate Local Agency Formation Commission.

One other matter deserves brief comment. According to the Regional Board, the Hidden Hills Mobile Home Park, an existing development in the unincorporated area, constitutes an existing water quality problem and this development logically should be served by the City's facilities. There will be more than adequate grant funded capacity allocated to the unincorporated area to permit the City to serve this development. The City agrees that the present waste disposal facilities of this development do constitute a water quality problem and the City is willing to provide service to this development. Relying upon the City's assurances, we will not dwell upon this issue other than to state that, in our opinion, regardless of "fair and equitable" considerations, a grantee receives grant funds and grant funded capacity as a public trust. To the extent that a grantee has available grant funded capacity allocated for an area, we believe that the grantee has an obligation to use that capacity to remedy the water quality problems of that area.

IV. FINDINGS AND CONCLUSIONS

For the reasons discussed, we find and conclude:

1. Under the circumstances of this case, the City's requirement of annexation as a condition of service for future development within its sphere of influence is neither unfair nor inequitable.

2. The City's aforesaid requirement of annexation is not a violation of its contractual obligation to operate as a regional facility providing service on a fair and equitable basis.

V. ORDER

IT IS HEREBY ORDERED that:

1. The City's obligations under its grant contracts shall be construed in accordance with this Order; and

2. To the extent that the DWQ final decision is inconsistent with this Order, that final decision is overruled.

Dated: May 20, 1982

/s/ Carla M. Bard  
Carla M. Bard, Chairwoman

/s/ L. L. Mitchell  
L. L. Mitchell, Vice Chairman

/s/ Jill B. Dunlap  
Jill B. Dunlap, Member

ABSENT  
F. K. Aljibury, Member